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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CITY OF MORGAN HILL,

Plaintiff and Respondent,

v.

SHANNON BUSHEY, AS REGISTRAR
OF VOTERS, etc. et al.,

Defendants and Respondents;

MORGAN HILL HOTEL COALITION,

Real Party in Interest and
Appellant;

RIVER PARK HOSPITALITY,

Real Party in Interest and
Respondent.

No. H043426

(Santa Clara County

Super. Ct. No. CV292595)

Appellant Morgan Hill Hotel Coalition (Coalition) appealed from the superior court's order granting a writ petition by respondent City of Morgan Hill (City) and removing from the June 2016 ballot Coalition's referendum challenging City's ordinance changing the zoning for a parcel owned by respondent River Park Hospitality (River Park). Although Coalition's referendum had properly qualified for placement on the ballot, City claimed that the referendum was invalid because, if the electorate rejected the

ordinance, it would *create* an inconsistency between the zoning for the parcel and the general plan's land use designation for the parcel.

On appeal, Coalition contended that a referendum that seeks to prevent a zoning change from taking effect does not *create* an inconsistency with a general plan's land use designation but merely maintains the preexisting status quo. The superior court relied on *deBottari v. City Council* (1985) 171 Cal.App.3d 1204 (*deBottari*) in rejecting Coalition's position. We disagreed with *deBottari* and held that a referendum petition challenging an ordinance that attempts to make the zoning for a parcel consistent with the parcel's general plan land use designation is not invalid if the legislative body remains free to select another consistent zoning for the parcel should the referendum result in the rejection of the legislative body's first choice of consistent zoning.

The California Supreme Court granted review and agreed with our rejection of *deBottari*. (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068.) Because it was "not clear if other zoning designations were available for the property here, or whether the City has other means to comply with a successful referendum while making the zoning ordinance and the general plan consistent with one another," the California Supreme Court directed this court to "remand to the trial court to address these questions." (*Id.* at p. 1091.) We do so. The superior court's order granting City's petition is reversed. On remand, the superior court shall vacate its order granting the petition and reconsider the petition after determining (1) whether other zoning designations were available for the property and (2) whether the City has other means to comply with a successful referendum while making the zoning ordinance and the general plan consistent with one another. Hotel Coalition shall recover its costs on appeal.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

City of Morgan Hill v. Bushey, as Registrar of Voters, etc. et al.

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